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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/724,048

12/01/2003

Morio Sakai

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1507

21839

7590

07/13/2005

BUCHANAN INGERSOLL PC
(INCLUDING BURNS, DOANE, SWECKER & MATHIS)
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EXAMINER

BLOUNT, ERIC

ART UNIT

PAPER NUMBER

2636

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/724,048	Applicant(s) SAKAI ET AL.	
	Examiner Eric M. Blount	Art Unit 2636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05032004</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 1, 2, 4, and 5** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S.

Patent No. 6,876,299. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding **claim 1**, claim 1 of Sakai et al '299 teaches an occupant determination device for a vehicle seat comprising a load sensor provided at a seat body and a controller for calculating a detection load value based on an output from the load sensor and determining whether an occupant seated on the seat is an adult or child based on the detected load value (lines 1-6). A hysteresis is provided for changing the occupant determination from either a child or an adult to an adult or a child (lines 6-14). Sakai et al '299 does not specifically disclose in claim 1 that the occupant determination is switched from a child to an adult. However, the determination is switch

from some sort of occupant to an adult (lines 6-7). It would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant that one might want to distinguish between an adult and a child. Further, Sakai et al make this suggestion throughout the specification and subsequent claims.

As for **claim 2**, claims 3 and 4 of Sakai et al '299 teach a load sensor provided on a seat body and a controller for calculating a detection load value based on a load value output from the load sensor, the controller changes the occupant determination from a first state to a second state when the detection load value exceeds a first determination threshold and changes the occupant determination from a second state to a first state when the detection load value becomes smaller than a second determination threshold which is smaller than the first determination threshold. Claims 3 and 4 combined teach a method for using thresholds for determining an occupant determination state. The states are switched between child and adult states. It would have been obvious to one of ordinary skill in the art the thresholds could have been adjusted are arranged in any manner that would distinguish a child from an adult.

Regarding **claims 4 and 5**, each of the claims of Sakai et al '299 teach a delay time from one occupant determination state to another.

3. **Claims 6 and 7** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,876,299 in view of Lichtinger [U.S. Patent No. 6,636,792].

Regarding **claims 6 and 7**, Lichtinger discloses that a plurality of load sensors may be provided for calculating total weight of an occupant in a seat sensing apparatus (Figure 9 and column 7, lines 54-67). Sakai et al '299 teach the remaining limitations of the claims (see rejections above). It would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to combine the teachings of Sakai et al '299 and Lichtinger because a combination would result in an occupant sensing apparatus that would provide more accurate results even during adverse driving conditions.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Though not used in an art rejection, the references cited all teach occupant determination devices that were useful during the examination of the present application.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric M. Blount whose telephone number is (571) 272-2973. The examiner can normally be reached on 8:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on (571) 272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eric M. Blount
Examiner
Art Unit 2636


JEFFERY HOFSAAS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600